

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the)	MB Docket No. 03-185
Commission's Rules to Establish Rules for)	
Digital Low Power Television and Television)	
Translator Stations)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	
)	
Amendment of Part 15 of the Commission's)	ET Docket No. 14-175
Rules to Eliminate the Analog Tuner)	
Requirement)	
To: The Commission		

COMMENTS OF SIGNAL ABOVE, LLC

Signal Above LLC ("Signal Above")¹ files these Comments in response to the above-referenced Notice of Proposed Rulemaking (the "NOPR"). The Commission seeks comment on a number of issues effecting translator and low power television ("LPTV") broadcasters. Signal Above submits these comments in support of the Commission's tentative conclusion that it should extend the September 1, 2015 digital transition deadline for LPTV and TV translator stations. The Commission also seeks comment on whether to permit digital LPTV stations to operate analog FM radio-type services on an ancillary and supplementary basis. Signal Above

¹ Signal Above is the licensee of channel 6 WDCN-LP, Fairfax, VA (Facility ID No. 20450) ("WDCN-LP"), and channel 6 WDCO-LP, Salisbury, MD (Facility ID No. 130439).

provides comments in support of allowing such a service.²

The September 1, 2015 LPTV and TV Translator Digital Transition Date Should Be Extended

The Commission tentatively concluded that it should postpone the September 1, 2015 deadline for LPTV and TV translator stations to transition to digital. Signal Above fully supports the Commission's conclusion and supports setting a transition date at a time to be determined in sometime after the incentive auction.

There is a compelling basis for extending the digital transition date. The arguments for extending the date have been largely advanced in earlier comments and are even more applicable now:

- A September 2015 deadline at this point would provide only a few months notice to make the transition since actual notice would run from adoption of a final timetable. The now less-than-eight month period until September 2015 is patently insufficient time for hundreds of analog LPTV stations to obtain FCC authority, necessary funding, and purchase and install new equipment to accomplish a timely transition to digital. Additional time would also be necessary to process an avalanche of digital permits, some involving Canadian clearance and mutual exclusivity.
- With any DTV channel spectrum repacking many of the LPTV stations will be displaced, requiring a duplicative and equally expensive second buildout. Best estimates indicate

² On November 28, 2014, a summary was published in the Federal Register specifying a deadline of December 29, 2014 for filing comments on the *Third Notice* and a January 12, 2015 deadline for filing reply comments. Since comment dates were to fall shortly after a major holiday, the Media Bureau, granted a two-week extension of the comment and reply comment deadlines. Comments are now due January 12, 2014 and reply comments are due on January 26, 2014.

that LPTV licensees face approximately \$70,000.00 in costs without a channel move, and over \$200,000.00 in costs with a channel move. Signal Above's digital cost estimates confirm these figures. Few licensees would be able to absorb the impact of the financial loss that would result from either losing a license as a result of displacement or of having to construct new facilities. Kicking the legs out from under hundreds of small business struggling to get their footing in a stumbling economy could only be justified by clear and compelling economic and public policy rationale, which here is lacking.

- There still exists a significant number of poor and underserved areas that rely on analog LPTV service. An earlier-than-market-driven transition, let alone a precipitous one, will result in gratuitous and economically-depressing loss of local broadcast services, especially in rural communities and to minorities.
- The market is well able to determine community by community, and station by station, the most efficient and effective transition date since the local community operators are best positioned to determine the needs of their audience. Normal market forces in each community will inexorably lead analog LPTVs to convert to digital unless there is (a) still sufficient local demand for analog service; (b) the licensee does not have or cannot obtain the significant financial resources needed for conversion; and/or (c) terrain issues make digital service unreliable. Any of these reasons is just cause for allowing each station to determine its own conversion timetable.

The Commission Should Establish a New Deadline for Conversion to Digital after the Incentive Auction

The Commission's plan to repurpose broadcast television spectrum by reallocating to wireless broadband radically impacts channel availability for LPTV broadcasting. Until that plan

is finalized, LPTV licenses as secondary services do not have the security of knowing there will be an available channel. The more logical and less draconian deadline would be to require digital conversion sometime after repackaging is promulgated, and all appeals settled. At that point, availability of channels will be known and, at least, uncertainty will no longer be an issue.

Since the rules for the incentive auction have not yet been finalized, it seems preferable to establish a conversion date sometime after the incentive auction. The auction has already been delayed for at least one year until 2016 as a result of various concerns raised about the process. Since there are no final rules in place, the timetable and process for the incentive auction are still very much subject to change. Revisiting the conversion date after the incentive auction will provide a more rational basis for determining a date. There is a real danger that establishing a date now—as in, for example, six months after the incentive auction—may turn out to be unworkable if, for instance, it turns out that the final availability of channels is not settled within that period.

The Commission Should Allow Analog Radio Services by Digital LPTV Channel 6 Stations as Ancillary or Supplementary Services

The Commission seeks comment on whether to allow LPTV stations on digital television channel 6 (82-88 MHz) to operate analog FM radio-type services on an ancillary or supplementary basis pursuant to Section 73.624(c) of the rules.³ Signal Above is the licensee of two Channel 6 stations: one WDCN-LP in Fairfax, Virginia and the other WDCO-LP in Salisbury, Maryland. WDCN-LP is providing a much needed and second most listened to Hispanic radio format in the Washington D.C. metro market on its analog audio stream.

³ 47 C.F.R. § 73.624(c).

Signal Above supports the Commission's proposed flexible use of digital Channel 6 to allow a continued analog radio operation. The proposal is clearly in the public interest in that not only will Channel 6 licensees be able to provide digital television programming but radio programming as well. As is the case with Signal Above, many current Channel 6 operators with radio programming are providing service to minority communities.⁴

Signal Above and its operator, Media One Communications, Inc., serve Washington, D.C.'s Hispanic population, a traditionally underserved market, on 87.7 "La Nueva". WDCN-LP is reaching nearly 900,000 Hispanics in the D.C. metropolitan area and provides localized, diverse audio programming that serves businesses and firms of modest size by preserving a primary medium of communication with the Hispanic market. The WDCN story, recently highlighted in a Washington Post front-page article,⁵, underscores the benefit of allowing continued analog radio service by channel 6 operators.

Walter Torrez is the President and owner of Media One Communications, Inc., which is operating WDCN pursuant to a lease management agreement. Mr. Torrez is one of two individuals that were the focus of the article by Steve Hendrix in the Washington Post on December 7, 2014, titled "Two Lives Changed by the 1986 Immigration Amnesty, with Very Different Results." The article reflects the importance the station has for the Hispanic community. As noted in the article, ". . . Torrez, taking a break from the morning radio show on which he regularly exhorts his largely immigrant audience to seize the opportunities available in

⁴ These include, but are not limited to, the following Channel 6 stations: KSFV-CD, San Fernando Valley, CA; KBEX-LP, Amarillo, TX; WLFM-LP, Cleveland, OH; WNYZ-LP, New York, NY; WEYS-LP, Miami, FL; KNNN-LP, Indio, CA; KCIO-LP, Victorville, CA; KRPE-LP, Banning, CA; KUHD-LP, Ventura, CA; KEFM-LP, Sacramento, CA; KFLZ-LP, San Antonio, TX; KXDP-LP, Denver, CO; WHDY-LP, Panama City, FL; WVOA-LP, Westvale, NY; and KZFW-LP, Dallas, TX.

⁵ See Steve Hendrix, *Two lives changed by the 1986 immigration amnesty, with very different results*, The Washington Post (Dec. 8, 2014), http://www.washingtonpost.com/local/two-lives-changed-by-the-1986-immigration-amnesty-with-very-different-results/2014/12/07/fe6e3716-7bf7-11e4-b821-503cc7efed9e_story.html.

their country. He's been a vocal advocate for legalizing today's undocumented residents and offers on-air advice to those navigating the immigration system." The article notes how, "Torrez steadily built a small DJ business into a string of radio gigs and an advertising company. In 2009, he and a partner leased 1000 W FM broadcasting license [sic]. La Nueva (WDCN-LP) *now employs 14 staffers* and airs an eclectic blend of Latin music." (emphasis added). Fostering the creative use of available spectrum through non-interfering, rule-compliant ancillary services to hundreds of thousands of minority listeners and small businesses seems to be a poster child for the Commission's proposed flexible use of digital Channel 6 to allow a continued analog radio operation.

Digital LPTV Will Be Able to Operate an Analog Transmitter without Interfering or Derogating Its Co-Channel Digital Operation

Comments already submitted in this proceeding confirm that an analog radio service is compatible and will not interfere with co-channel digital operations. Island Broadcasting conducted studies on 27 different manufacturers of TV receivers and Gumm and Rhodes conducted studies on 18 receivers. Both studies came to the same conclusion: even with the worst-performing, least sophisticated, oldest TV receivers still on the market the digital signal was received and decoded where the digital signal was at least 7 DB or five times the power above the FM power level. Therefore, assuming maximum license power is 3KW the FM ERP can be over 500 W without causing any disruption to reception of the digital TV signal, even with the oldest technology being sold. The few receivers with the old technology will be shortly phased out allowing for greater power levels.

**There Is No Potential for Interference from Digital LPTV Stations' Ancillary or
Supplementary Analog FM Radio-Type Operations to Primary Licensees, Including NCE
FM Radio Stations**

Signal Above is unaware of any proven interference complaints to NCE operators resulting from broadcasts on analog 87.7. Signal above has been operating for over five years with no interference complaints from any radio station.

In the unlikely event of an interference issue, the channel 6 ancillary service, as a secondary service, would be required to resolve any interference complaints. In the event such complaints could not be resolved the ancillary service would be terminated. Therefore, any licensed primary operator can be assured that it will not suffer interference caused by an analog 87.7 operation.

**Analog FM Radio-Type Operations by LPTV Stations on an Ancillary or Supplementary
Basis, Should Not Be Subject to the Part 73 Rules Applicable to FM Radio Stations**

Signal Above takes the position that that any ancillary analog FM radio-type operation should not be subject to FM rules. The proposed service should be permitted subject only to the technical parameters that may be adopted in this rulemaking—specifically that the use not cause interference or interfere with reception of the Channel 6 digital signal.

Signal Above notes that WDCN-LP in the Washington metro area is operated with a fully equipped and staffed main studio. As such, it is not opposed to a main studio requirement, but believes the better approach is to have that determination be a market-driven decision. Signal Above opposes applicability of FM rules or jurisdiction by the audio service since this is an ancillary TV service.

The proposed radio-type service, if adopted, would be at the discretion of Channel 6 licensees and is included within the envelop of the license for a channel 6. Therefore, the suggestion that an FM application type processes for the use of the spectrum be followed is tantamount to licensing the same spectrum twice. Only existing or future Channel 6 licensees should have the right to offer the radio-type service. Any rules, which should be under the auspices of the video division, should be limited to technical parameters assuring there is no interference.

Analog FM Radio-Type Service on an Ancillary or Supplementary Basis, Should Not Be Subject to a 5% Fee

The ancillary and supplementary rule at issue provides that digital television stations “must annually remit a fee of five percent of the gross revenues derived from all ancillary and supplementary services . . . which are feeable”⁶ “Feeable” services are those where there is a fee paid for the service like a subscription fee.⁷ It also includes compensation from a third party in return for the transmission of material provided by that third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required).

The analog-type ancillary radio service proposed does not fall within the statutory definition of a feeable service. Therefore, the 5% fee should not apply.

⁶ *Id.*; see also 47 U.S.C. § 336(e).

⁷ See 47 C.F.R. § 73.624(g)(1)(i); see also 47 U.S.C. § 336(e)(1)(A). Moreover, the rules provide that “[t]he fee required by this provision shall be imposed on any and all revenues from such services, including revenues derived from subscription fees and from any commercial advertisements transmitted on the service.” See 47 C.F.R. § 73.624(g)(1)(i).

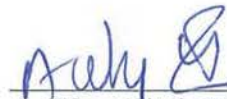
Conclusion

Signal Above supports extension of the digital conversion date to a date to be determined sometime after the incentive auction repacking is final. It is only at that point that LPTV operators will have certainty concerning the availability of a channel and avoid the risk of a double build.

Signal Above also supports allowing channel 6 digital operators to continue to offer analog radio service. The public interest benefits are evident. In addition to providing digital television, channel 6 operators could continue to provide much needed radio service. In the case of Signal Above and many other operators the service is to minority and underserved populations. There is also no impediment to the proposed ancillary radio service. The technology exists to provide a radio signal without interference.

Date: September 12, 2015

Respectfully submitted,



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